

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS**

**OSPREY UNDERWRITING AGENCY)
LIMITED, CENTENNIAL INSURANCE)
COMPANY and CERTAIN UNDERWRITERS)
AT LLOYDS)**

Plaintiffs

Civ. Act. No.: 04-11965 JLT

v.

VICTOR P. CAPALDI

and

AGA FISHING CORP.,

Defendants

ANSWER AND COUNTERCLAIM BY DEFENDANT VICTOR CAPALDI

Now comes the Defendant, Victor P. Capaldi, in the above entitled matter and by and through his attorneys, Latti & Anderson LLP files his Answer to Plaintiffs' Complaint.

1. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 1, and, therefore, denies the same.

2. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 2, and, therefore, denies the same.

3. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 3, and, therefore, denies the same.

4. Admit.

5. Admit.

6. The allegations contained in Paragraph No. 6 are allegations of law not requiring a response, but to the extent that a response is required, the Defendant denies all the allegations contained therein.

7. Admit.

8. Admit.

9. Admit.

10. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 10, and, therefore, denies the same.

11. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 11, and, therefore, denies the same.

12. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 12, and, therefore, denies the same.

13. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 13, and, therefore, denies the same.

14. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 14, and, therefore, denies the same.

15. Admit.

16. Defendant admits that he requested tender of the policy but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

17. Admit.

18. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 18, and, therefore, denies same.

19. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 19, and, therefore, denies same.

20. Denied.

21. The Defendant is without knowledge or information sufficient to form a belief as to the truth to the allegations contained in paragraph 21, and, therefore, denies same.

22. Paragraph 22 is a statement of law rather than an assertion of fact relating to this action and therefore no response is required. To the extent that a response is required Defendant denies the same.

WHEREFORE, the Defendant, Victor Capaldi prays that this Honorable Court order the Plaintiffs to tender the remaining limits of their policy to Defendant Victor Capaldi and any other relief this Court deems proper and just.

**PLAINTIFF'S COUNTERCLAIM AGAINST OSPREY
UNDERWRITING AGENCY LIMITED, CENTENNIAL INSURANCE COMPANY and
CERTAIN UNDERWRITERS AT LLOYDS**

23. The Defendant, Victor Capaldi, is a resident of Rochester, County of Bristol, and Commonwealth of Massachusetts.

24. The Plaintiff, Osprey Underwriting Agency Limited ("Osprey"), is an insurance agency with a principal place of business in located in London, UK.

25. The Plaintiff, Centennial Insurance Company ("Centennial") is an insurance company with a principal place of business located in New York, New York.

26. The Plaintiff Certain Underwriters at Lloyds, are insurance underwriters with a principal place of business in London, UK.

27. At all times relevant to this action, the Plaintiffs were engaged in the conduct of trade or commerce within the meaning of M.G.L.c. 93A, §§2 and 9.

28. On or about November 25, 2003, while in the in the performance of his duties in the service of the F/V GEORGIE J, the Defendant, Victor P. Capaldi, sustained severe personal injuries rendering him a quadriplegic when a piece of equipment fell and struck the Plaintiff.

29. In July of 2004, the Defendant offered to settle the case and the Plaintiff's refused to settle.

30. By letter dated August 3, 2004, the Defendant, through counsel, forwarded a written demand for relief pursuant to M.G.L. c. 93A, §2 and 9 to the Plaintiffs and its agents.

31. The Plaintiffs have refused to settle the case.

32. By virtue of the Plaintiffs' conduct in failing to settle when liability is reasonably clear and damages exceed the policy, the Plaintiffs are guilty of engaging in unfair settlement practices prohibited by M.G.L.c. 176D § 3(9)(f).

33. By virtue of the Plaintiffs' conduct as alleged above, the Plaintiffs have knowingly and willingly committed unfair and deceptive acts and practices in violation of G.L.c. 93A, §§ 2 and 9.

34. As a direct and proximate result of the Plaintiffs' unfair or deceptive acts or practices in violation of G.L.c. 93A, §§ 2 and 9, the Defendant has been damaged.

WHEREFORE, the Defendant, Victor Capaldi, requests that this Court award the following relief:

1. Enter judgment in his favor in an amount to be determined by the jury, together with costs and interest;
2. Enter judgment in his favor for double or triple his damages, as well as costs and attorney's fees; and
3. Award such other and further relief as this Court deems just and proper.

Respectfully submitted for the
the Defendant, Victor P. Capaldi,
by his attorney,

/s/ Carolyn M. Latti
BBO #567-394
David F. Anderson
BBO#560-994
LATTI & ANDERSON LLP
30-31 Union Wharf
Boston, MA 02109
(617) 523-1000

Dated: December 6, 2004

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2004, I electronically filed Answer and Counterclaim by Defendant Victor Capaldi with the Clerk of the Court using CM/ECF system and will send a copy of such filing(s) to the following:

Joseph A. Regan, Esquire
Regan & Kiely LLP
85 Devonshire Street
Boston, MA 02109

Pamela LaFreniere
888 Purchase Street
New Bedford, MA 02740

/s/ Carolyn M. Latti
Carolyn M. Latti